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Supreme Court, U.S.
FILED
NOV 19 2001
CLERK

No. 00-1853

In the

Supreme Court of the United States

AKOS SWIERKIEWICZ,
Petitoner,

v.

SOREMA N.A.,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT FILED JUNE 8, 2001
CERTIORARI GRANTED SEPTEMBER 25, 2001

51 pp

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RELEVANT DOCKETS ENTRIES

District Court

08/03/99	COMPLAINT filed United States District Court for the Eastern District of Pennsylvania.
11/15/99	ORDER filed on motion of Sorema N.A. transferring the action to the United States District Court for the Southern District of New York.
12/22/99	CASE DOCKETED in the United States District Court for the Southern District of New York.
02/01/00	NOTICE OF MOTION of Sorema N.A. to dismiss plaintiff's complaint, with affidavit, filed.
02/01/00	MEMORANDUM of Sorema N.A. in support of motion to dismiss.
02/29/00	MEMORANDUM of Akos Swierkiewicz in opposition to motion to dismiss.
03/01/00	REPLY MEMORANDUM of Sorema N.A. in further support of motion to dismiss.
04/19/00	AMENDED COMPLAINT.
05/25/00	SUPPLEMENTAL AFFIDAVIT in further support of motion to dismiss.

07/27/00	MEMO ENDORSEMENT on Transcript of hearing on 7/6/00; that the amended complaint is dismissed. The federal claims are insufficient, and I decline to exercise supplemental jurisdiction over the state claims. Because no additional facts have been discussed that would cure the deficiencies in the federal claim, the dismissal is with prejudice (signed by Judge Loretta A. Preska).
07/31/00	JUDGMENT; that for the reasons stated in the Courts Memo Endorsed Order, the amended complaint is dismissed with prejudice (signed by James M. Parkinson, Clerk of the Court).
08/16/00	NOTICE OF APPEAL of Akos Swierkiewicz.
08/18/00	MEMO ENDORSEMENT on 8/1/00 letter on behalf of Akos Swierkiewicz; because counsel was unable to state any additional facts to be included in an amended complaint, any amendment would be futile (signed by Judge Loretta A. Preska).

Court of Appeals for the Second Circuit

11/30/00	BRIEF of appellant Akos Swierkiewicz filed.

11/30/00	JOINT APPENDIX filed. Number of volumes: I.
01/05/01	BRIEF of appellee Sorema N.A. filed.
01/23/01	REPLY BRIEF of appellant Akos Swierkiewicz filed.
03/05/01	CASE heard before WALKER CH. J, OAKES, CALABRESI C. JJ.
03/12/01	JUDGMENT filed; judgment of the District Court is affirmed.
03/12/01	LETTER dated 2/9/01 pursuant to Rule 28(j) on behalf of appellant Akos Swierkiewicz.
04/02/01	Judgment MANDATE issued.

Supreme Court

06/08/01	PETITION FOR WRIT OF CERTIORARI filed by Akos Swierkiewicz.
09/25/01	WRIT granted.

99-CV-3917
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

AKOS SWIERKIEWICZ,
Plaintiff,

against

SOREMA, N.A.,
Defendant.

JURY TRAIL DEMANDED

COMPLAINT

1. This is an employment discrimination action brought by Akos Swierkiewicz to recover damages against SOREMA N.A. ("SOREMA") for the violation of his rights under Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000e et. seq. ("Title II") and the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621 et. seq. ("ADEA").

JURISDICTION AND VENUE

2. Jurisdiction over Mr. Swierkiewicz's Title VII claim is conferred by 42 U.S.C. §2000e-5(f)(3). Jurisdiction over his ADEA claim is conferred by 29 U.S.C. §626(c)(1).

3. Venue is proper in this district pursuant to the general venue statute, 28 U.S.C. §1391, and under Title VII's special venue statute, 42 U.S.C. §2000e-5(f)(3).

PARTIES

4. Plaintiff, Akos Swierkiewicz, resides at 821 Hudson Drive, Yardley, Pennsylvania 19067.

5. Defendant SOREMA is a New York corporation headquartered at 199 Water Street, 20th Floor, New York, New York 10038.

6. At all times relevant hereto, SOREMA has resided and conducted business in this judicial district.

7. At all times relevant hereto, SOREMA has been an employer within the meaning of Title VII and the ADEA.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. On or about July 11, 1997 Mr. Swierkiewicz filed a Charge of Discrimination against SOREMA with the Philadelphia District Office of the Equal Employment Opportunity Commission ("EEOC"), Charge No. 170971447, charging it with unlawful national origin and age discrimination in connection with his dismissal from employment.

9. By notice dated May 3, 1999 and which he received on May 5, 1999, Mr. Swierkiewicz was notified by the EEOC of his right to file a civil action against SOREMA.

10. This lawsuit has been timely filed within 90 days of Mr. Swierkiewicz's receipt of the EEOC's right-to-sue notice.

FACTUAL ALLEGATIONS

11. Mr. Swierkiewicz is a native of Hungary. He became a United States citizen in 1970.

12. Mr. Swierkiewicz is 53 years old. His date of birth is July 25, 1946,

13. SOREMA was formed in 1989. It is a reinsurance company principally owned and controlled by a

French parent corporation. At all times relevant hereto, SOREMA's Chief Executive Officer has been François M. Chavel, a French national.

14. From 1970 to 1986, Mr. Swierkiewicz was employed by INA which after its merger in 1982 with Connecticut General, became CIGNA Insurance Company. His last position at CIGNA was Vice President of Special Risk Facilities.

15. From 1986 to 1989, Mr. Swierkiewicz was employed by SCOR U.S., a reinsurance company, as Senior Vice President for Research and Special Risks.

16. On April 17, 1989 Mr. Swierkiewicz began his employment with SOREMA in the position of Senior Vice President and Chief Underwriting Officer ("CUO").

17. In all respects, Mr. Swierkiewicz performed his job in a satisfactory and exemplary manner.

18. Despite plaintiff's stellar performance, in February 1995 Mr. Chavel demoted him from his CUO position to a marketing and services position and transferred the bulk of his underwriting responsibilities to another French national, Nicholas Papadopoulo, who was 32 years old at the time (and 16 years younger than plaintiff).

19. Mr. Chavel demoted Mr. Swierkiewicz on account of his national origin (Hungarian) and his age (he was 49 at the time).

20. A year later, in or about February 1996, Mr. Chavel formally appointed Mr. Papadopoulo as SOREMA's CUO.

21. Mr. Papadopoulo was far less experienced and less qualified to be SOREMA's CUO than was Mr. Swierkiewicz. Indeed, Mr. Papadopoulo had just one year of underwriting experience prior to being appointed CUO by Mr. Chavel. By contrast, plaintiff had more than 26 years of broad based experience in the insurance and reinsurance industry.

22. At the time Mr. Papadopoulo assumed plaintiff's duties as CUO, Mr. Chavel stated that he wanted to "energize" the underwriting department - clearly implying that plaintiff was too old for the job.

23. In light of Mr. Papadopoulo's inexperience, Mr. Chavel brought in Daniel Peed from SOREMA's Houston, Texas office to support him in his CUO duties. Mr. Peed, like Mr. Papadopoulo, was in his early 30s. Shortly after his transfer to SOREMA's office in New York City, Mr. Chavel promoted Mr. Peed to the position of Senior Vice President of Risk Property.

24. Prior to his transfer, Mr. Peed had been a Second Vice President reporting to plaintiff.

25. Not long after plaintiff's demotion, SOREMA hired another French national, Michel Gouze, as Vice President in charge of Marketing. Mr. Gouze, unlike plaintiff, had very little prior experience in the insurance/reinsurance business.

26. Because of his inexperience, Mr. Gouze needed to rely on Mr. Swierkiewicz to perform his marketing duties for SOREMA.

27. Mr. Gouze's marketing duties at times overlapped with those of plaintiff. Despite Mr. Swierkiewicz's requests to better coordinate their duties, Mr. Chavel refused to accommodate those requests or to have Mr. Gouze report to plaintiff.

28. Mr. Swierkiewicz was isolated by Mr. Chavel following his demotion, excluded from business decisions and meetings and denied the opportunity to reach his true potential at SOREMA.

29. Efforts by Mr. Swierkiewicz to meet with Mr. Chavel to resolve the unsatisfactory working conditions to which he was subjected following his demotion proved unsuccessful.

30. On April 14, 1997, following two years of ongoing discrimination on account of his national origin and age, Mr. Swierkiewicz sent a memo to Mr. Chavel outlining his grievances and requesting a severance package to resolve his disputes with SOREMA.

31. Mr. Chavel did not respond to Mr. Swierkiewicz's memo.

32. In the morning, on Tuesday April 29, 1997, Mr. Chavel and Daniel E. Schmidt, IV, SOREMA's General Counsel, met with Mr. Swierkiewicz and gave him two options: either resign his job (with no severance package) or be fired.

33. Mr. Swierkiewicz refused to resign his employment with SOREMA.

34. As a result, he was fired by Mr. Chavel, effective that very day (April 29, 1997).

35. SOREMA had no valid basis to fire Mr. Swierkiewicz.

36. Plaintiffs age and national origin were motivating factors in SOREMA's decision to terminate his employment.

37. Unlike plaintiff who was fired without cause and without any severance pay or benefits, SOREMA has provided generous severance packages to a number of former executives for whom it had cause to terminate their employment. These include, but are not limited to, the following individuals: Jay Kubinak, Thilo Herda, Douglas Zale, Nigel Harley and Marcus Corbally.

38. As a direct and proximate cause of his being fired by SOREMA, Mr. Swierkiewicz has suffered and will continue to suffer a substantial loss of earnings to which he otherwise would have been entitled. This includes, but is not limited to, the loss of his salary, bonus, automobile allowance and pension credits as well as the loss of his medical and dental insurance, life insurance, short and long term disability insurance and the insurance he had for accidental death and dismemberment.

39. As a further direct and proximate cause of his being fired by SOREMA, Mr. Swierkiewicz has suffered damage to his reputation and harm to his career. He has also experienced physical pain and suffering, mental anguish, and the loss of enjoyment of life's pleasures.

40. SOREMA acted willfully and in reckless disregard of Mr. Swierkiewicz's rights under Title VII and the ADEA by discharging him from employment on account of his age and national origin.

STATEMENT OF CLAIMS

COUNT I: VIOLATION OF TITLE VII

41. Mr. Swierkiewicz repeats and incorporates by reference the allegations of paragraphs 1 -40 of the Complaint as if they were set forth in full.

42. SOREMA terminated Mr. Swierkiewicz's employment on account of his national origin and thereby violated his right to equal employment opportunity as protected by Title VII.

COUNT II: VIOLATION OF THE ADEA

43. Mr. Swierkiewicz repeats and incorporates by reference the allegations of paragraphs 1 -42 of the Complaint as if they were set forth in full,

44. SOREMA terminated Mr. Swierkiewicz's employment on account of his age and thereby violated his right to equal employment opportunity as protected by the ADEA.

PRAYER FOR RELIEF

WHEREFORE, Mr. Swierkiewicz respectfully requests the Court to enter judgment in his favor and against SOREMA, and to accord him the following relief:

(a) Back pay with prejudgment interest and all the fringe benefits to which he is entitled;

(b) Front pay and benefits to the extent reinstatement is not feasible;

(c) Compensatory damages for his non-economic injuries in an amount authorized by Title VII;

(d) Punitive damages to punish and deter SOREMA from future acts of employment discrimination in an amount authorized by Title VII;

(e) Liquidated damages in an amount equal to twice Mr. Swierkiewicz's back pay losses as authorized by the ADEA;

(f) An award of reasonable counsel fees and costs to compensate Mr. Swierkiewicz for having to prosecute this action against SOREMA; and

(g) Such other legal and equitable relief or may be just and proper under the circumstances.

JURY DEMAND

Mr. Swierkiewicz demands a trial by jury on all the issues in this action that are triable by law.

Respectfully submitted,

RAYNES, MCCARTY, BINDER, ROSS &MUNDY

HAROLD L GOODMAN, ESQUIRE
1845 Walnut Street, 20th Floor
Philadelphia, PA 19103
(215)568-6190
Counsel for Plaintiff
Akos Swierkiewicz
Dated: August 3, 1999

ROSENMAN & COLIN LLP
Attorneys for Defendant
575 Madison Avenue
New York, New York 10022
(212) 940-8800
LRB- 4151

99 Civ. 12272 (LAP)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AKOS SWIERKIEWICZ,
Plaintiff,

against

SOREMA, N.A.,
Defendant.

NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the complaint dated August 3, 1999, and upon the annexed affidavit of Lauren Reiter Brody, sworn to February 1, 2000, and the exhibits thereto, the undersigned will move this Court, before the Honorable Loretta A. Preska, in Courtroom 12A of the United States Courthouse, 500 Pearl Street, New York, New York, on February 24, 2000, for an order, pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure, (a) dismissing plaintiff's complaint on the grounds that the claims asserted therein are barred by the statute of limitations and otherwise fail to state a claim for relief, and (b) granting such other relief as is just and proper.
February 1, 2000

ROSENMAN & COLIN LLP

By: Lauren Reiter Brody

Attorneys for Defendant
575 Madison Avenue
New York, New York 10022
(212) 940-8800

TO: VLADECK, WALDMAN,
ELIAS & ENGELHARD, P.C.
Attorneys for Plaintiff
1501 Broadway
New York, New York 10036
(212) 403-7300

99 Civ. 12272 (LAP)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AKOS SWIERKIEWICZ,
Plaintiff,

against

SOREMA, N.A.,
Defendant.

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LAUREN REITER BRODY, being duly sworn, deposes and says:

1. I am a member of the firm of Rosenman & Colin LLP, attorneys for defendant Sorema N.A. ("Sorema"). I submit this affidavit in support of Sorema's motion, pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure, to dismiss the complaint herein, on the grounds that plaintiff's claims (i) are barred by the statute of limitations, and (ii) otherwise fail to state a claim for relief. A copy of the complaint is annexed hereto as Exhibit A.

2. Plaintiff Akos Swierkiewicz ("Swierkiewicz") was employed by Sorema for approximately eight years as a

Senior Vice President, Swierkiewicz was 43 years old when he began his employment with Sorema.

3. In February 1995, a reorganization occurred at Sorema which resulted in changes to Swierkiewicz's job responsibilities.

4. In April 1997, more than two years after the reorganization, Swierkiewicz wrote a letter to Francois Chavel ("Chavel"), Sorema's President and Chief Executive Officer, informing Chavel that he was unhappy with his job and intended to leave the company, and demanding a severance package. The letter did not complain of or mention any discrimination against Swierkiewicz. Swierkiewicz subsequently went to his office and cleaned out all of his personal belongings.

5. As a result of Swierkiewicz's actions, Chavel gave Swierkiewicz two choices: either resign his job or be fired. Swierkiewicz refused to resign because Sorema did not grant him the severance he demanded.

6. In July 1997, Swierkiewicz filed a charge of discrimination with the Equal Employment Opportunity Commission (the "EEOC"), alleging discrimination on the basis of his national origin and age. A copy of Swierkiewicz's EEOC charge is annexed hereto as Exhibit B.

7. In August 1999, Swierkiewicz commenced an action against Sorema asserting claims under Title VII of the Civil Rights Act of 1964 ("Title VII") and the Age Discrimination In Employment Act ("ADEA"). The complaint contains two counts, one for national origin discrimination under Title VII, and the other for age discrimination under the ADEA.

8. This motion seeks dismissal of Swierkiewicz's complaint for the following reasons. First, Swierkiewicz's claims should be dismissed because they are untimely. Second, Swierkiewicz's claims should be dismissed because they fail to state a prima facie case of discrimination based on national origin or age.

9. For the foregoing reasons, and for the reasons set forth in the accompanying memorandum, it is respectfully submitted that Sorema's motion to dismiss be granted.

LAUREN REITER BRODY

Sworn to before me this
1st day of February, 2000

NOTARY PUBLIC

PENNY KAUFMAN
Notary Public, State al New York
No. 01KA6031140
Qualified in Kings County
Commission Expires Sep. 27, 2001

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. Fancois Chavel
President/C.E.O.
Sorema
199 Water Street 20th Floor
New York, NY 10038

PERSON FILING CHARGE
Swierkiewcz, Akos

THIS PERSON (check one)
X CLAIMS TO BE AGGRIEVED

IS FILING ON BEHALF OF ANOTHER

DATE OF ALLEGED VIOLATION

Earliest	Most Recent
04/29/97	04/29/97

PLACE OF ALLEGED VIOLATION
New York, NY

CHARGE NUMBER
170971447

NOTICE OF CHARGE OF DISCRIMINATION
(See EEOC "Rules and Regulations"
before completing this form)

You are hereby notified that a charge of employment discrimination has been filed against your organization under:

■ TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

■ THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

THE AMERICANS WITH DISABILITIES ACT

THE EQUAL PAY ACT (29 U.S.C., SECT. 206(d)) investigation will be conducted concurrently with our investigation of this charge.

The boxes checked below apply to your organization:

1. ■ No action is required on your part at this time.

2. Please submit by _____ a statement of your position with respect to the allegation(s) contained in this charge, with copies of any supporting documentation. This material will be made a part of this file and will be considered at the time that we investigate this charge. Your prompt response to this request will make it easier to conduct and conclude our investigation of this charge.

3. Please respond fully by _____ to the attached request for information which pertains to the allegations contained in this charge. Such information will be made part of the file and will be considered by the Commission during the course of its investigation of the charge.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Philadelphia District Office
The Bourse, Suite 400
21 S. Fifth Street
Philadelphia, PA 19106-2515

Joan D. Gmitter, Supervisor
(Commission Representative)

(215) 451-5803
(Telephone Number)

ENCLOSURE: COPY OF CHARGE
BASIS OF DISCRIMINATION

RACE COLOR SEX RELIGION ■ NAT. ORIGIN ■ AGE DISABILITY RETALIATION OTHER
CIRCUMSTANCES OF ALLEGED VIOLATION
DATE: 07/25/97

TYPED NAME/TITLE OF AUTHORIZED
EEOC OFFICIAL

Marie M. Tomasso

SIGNATURE

RESPONDENT'S COPY

CHARGE OF DISCRIMINATION
EEOC CHARGE NUMBER 170971447

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I. I was hired by the Respondent on April 17, 1989 as a Senior Vice President and Chief Underwriting Officer. On April 29, 1997, I was discharged.

II. Francois Chavel (French/50) President/CEO, gave me the option to either resign or be terminated. I opted to be terminated. He told me that I committed a hostile act against the company by clearing out my personal items from my office. This all stemmed from my untenable relationship with Nicholas Papadopoulo (a natural born French citizen of

Greek heritage/age 33) Executive Vice President and Chief Underwriting Officer.

III. I believe that I have been discriminated against because of my national origin (Hungarian) and because of my age (51) because:

1. In February 1995, my position of Senior Vice President was eliminated and I was demoted to newly created position of Services retaining only a small part of my underwriting responsibilities. Mr. Chavel informed that the bulk of my former responsibilities would be transferred to Nicolas Papadopoulo (a natural born French citizen of Greek heritage/age 33).

2. To my belief I was more qualified than Mr. Papadopoulo. I base this on my experience and knowledge of the industry. In addition, Mr. Papadopoulo had no underwriting experience.

3. There were no other Hungarians at any level in the company.

4. I was never informed by Mr. Chavel that my performance was less than satisfactory, nor was I ever counseled and/or warned about my performance from Mr. Chavel.

5. The Respondent is a French owned company.

NO. 99 Civ. 12272 (LAP)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

AKOS SWIERKIEWICZ,
Plaintiff,

v.

SOREMA, N.A.,
Defendant.

AMENDED COMPLAINT

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, plaintiff, Akos Swierkiewicz, amends his complaint as a matter of course to state claims for relief against defendant, SOREMA, N.A., for violations of the New York State Executive Law, §296 et.seq. and the Administrative Code of the City of New York, §8-107 et. seq.

1. This is an employment discrimination action brought by Akos Swierkiewicz to recover damages against SOREMA NA ("SOREMA") for the violation of his rights under Title VII of the 1964 Civil Rights Act 42 U.S.C. §2000e et.seq. ("Title VII"); the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621 et. seq. ("ADEA"); the New York State Executive Law, §296 et. seq. (the "Human Rights Law"); and the Administrative Code of the City of New York, §8-107 et. seq. (the "City Law").

JURISDICTION AND VENUE

2. Jurisdiction over Mr. Swierkiewicz's Title VII claim is conferred by 42 U.S.C §2000e-5(f)(3). Jurisdiction over his ADEA claim is conferred by 29 U.S.C. §626(c)(1).

Supplemental jurisdiction over his Human Rights Law and City Law claims is conferred by 29 U.S.C. §1367(a).

3. Venue is proper in this district pursuant to the general venue statute, 28 U.S.C. §1391, and under Title Vll's special venue statute, 42 U.S.C. §2000e-5(f)(3).

PARTIES

4. Plaintiff, Akos Swierkiewicz, resides at 821 Hudson Drive Yardley, Pennsylvania 19067.

5. Defendant SOREMA is a New York corporation headquartered at 199 Water Street, 20th Floor, New York, New York 10038.

6. At all times relevant hereto, SOREMA has resided and conducted business in this judicial district.

7. At all times relevant hereto, SOREMA has been an employer within the meaning of Title VII and the ADEA.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. On or about July 11, 1997 Mr. Swierkiewicz filed a Charge of Discrimination against SOREMA with the Philadelphia District Office of the Equal Employment Opportunity Commission ("EEOC"), Charge No. 170971447, charging it with unlawful national origin and age discrimination in connection with his dismissal from employment.

9. By notice dated May 3, 1999 and which he received on May 5 1999, Mr. Swierkiewicz was notified by the EEOC of his right to file a civil action against SOREMA.

10. This lawsuit has been timely filed within 90 days of Mr. Swierkiewicz's receipt of the EEOC's right-to-sue notice.

11. Pursuant to §8-502(c) of the City Law, prior to filing this Amended Complaint, plaintiff Swierkiewicz served a copy of the Amended Complaint on the City of New York Commission on Human Rights and the City of New York Corporation Counsel.

FACTUAL ALLEGATIONS

12. Mr. Swierkiewicz is a native of Hungary. He became a United States citizen in 1970.

13. Mr. Swierkiewicz is 53 years old. His date of birth is July 25, 1946.

14. SOREMA was formed in 1989. It is a reinsurance company principally owned and controlled by a French parent corporation. At all times relevant hereto, SOREMA's Chief Executive Officer has been François M. Chavel, a French national.

15. From 1970 to 1986, Mr. Swierkiewicz was employed by INA which after its merger in 1982 with Connecticut General, became CIGNA Insurance Company. His last position at CIGNA was Vice President of Special Risk Facilities.

16. From 1986 to 1989, Mr. Swierkiewicz was employed by SCOR U. S., a reinsurance company, as Senior Vice President for Research and Special Risks.

17. On April 17, 1989 Mr. Swierkiewicz began his employment with SOREMA in the position of Senior Vice President and Chief Underwriting Officer ("CUO").

18. In all respects, Mr. Swierkiewicz performed his job in a satisfactory and exemplary manner.

19. Despite plaintiff's stellar performance, in February 1995 Mr. Chavel demoted him from his CUO position to a marketing and services position and transferred the bulk of his underwriting responsibilities to another French national, Nicholas Papadopoulo, who was 32 years old at the time (and 16 years younger than plaintiff).

20. Mr. Chavel demoted Mr. Swierkiewicz on account of his national origin (Hungarian) and his age (he was 49 at the time).

21. A year later, in or about February 1996, Mr. Chavel formally appointed Mr. Papadopoulo as SOREMA's CUO.

22. Mr. Papadopoulo was far less experienced and less qualified to be SOREMA's CUO than was Mr. Swierkiewicz. Indeed, Mr. Papadopoulo had just one year of underwriting experience prior to being appointed CUO by Mr. Chavel. By contrast, plaintiff had more than 26 years of broad based experience in the insurance and reinsurance industry.

23. At the time Mr. Papadopoulo assumed plaintiff's duties as CUO, Mr. Chavel stated that he wanted to "energize" the underwriting department-- clearly implying that plaintiff was too old for the job.

24. In light of Mr. Papadopoulo's inexperience, Mr. Chavel brought in Daniel Peed from SOREMA's Houston, Texas office to support him in his CUO duties. Mr. Peed, like Mr. Papadopoulo, was in his early 30s. Shortly after his transfer to SOREMA's office in New York City, Mr.

Chavel promoted Mr. Peed to the position of Senior Vice President of Risk Property.

25. Prior to his transfer, Mr. Peed had been a Second Vice President reporting to plaintiff.

26. Not long after plaintiff's demotion, SOREMA hired another French national, Michel Gouze, as Vice President in charge of Marketing. Mr. Gouze, unlike plaintiff, had very little prior experience in the insurance/reinsurance business.

27. Because of his inexperience, Mr. Gouze needed to rely on Mr. Swierkiewicz to perform his marketing duties for SOREMA.

28. Mr. Gouze's marketing duties at times overlapped with those of plaintiff. Despite Mr. Swierkiewicz's requests to better coordinate their duties, Mr. Chavel refused to accommodate those requests or to have Mr. Gouze report to plaintiff.

29. Mr. Swierkiewicz was isolated by Mr. Chavel following his demotion, excluded from business decisions and meetings and denied the opportunity to reach his true potential at SOREMA.

30. Efforts by Mr. Swierkiewicz to meet with Mr. Chavel to resolve the unsatisfactory working conditions to which he was subjected following his demotion proved unsuccessful.

31. On April 14, 1997, following two years of ongoing discrimination on account of his national origin and age, Mr. Swierkiewicz sent a memo to Mr. Chavel outlining his grievances and requesting a severance package to resolve his disputes with SOREMA.

32. Mr. Chavel did not respond to Mr. Swierkiewicz's memo.

33. In the morning, on Tuesday April 29, 1997, Mr. Chavel and Daniel E. Schmidt, IV, SOREMA's General Counsel, met with Mr. Swierkiewicz and gave him two options: either resign his job (with no severance package) or be fired.

34. Mr. Swierkiewicz refused to resign his employment with SOREMA.

35. As a result, he was fired by Mr. Chavel effective that very day (April 29, 1997).

36. SOREMA had no valid basis to fire Mr. Swierkiewicz.

37. Plaintiff's age and national origin were motivating factors in SOREMA's decision to terminate his employment.

38. Unlike plaintiff who was fired without cause and without any severance pay or benefits, SOREMA has provided generous severance packages to a number of former executives for whom it had cause to terminate their employment. These include, but are not limited to the following individuals: Jay Kubinak, Thilo Herda, Douglas Zale, Nigel Harley and Marcus Corbally.

39. As a direct and proximate cause of his being fired by SOREMA, Mr. Swierkiewicz has suffered and will continue to suffer a substantial loss of earnings to which he otherwise would have been entitled. This includes, but is not limited to, the loss of his salary, bonus, automobile allowance and pension credits as well as the loss of his medical and dental insurance, life insurance, short and long term disability

insurance and the insurance he had for accidental death and dismemberment.

40. As a further direct and proximate cause of his being fired by SOREMA, Mr. Swierkiewicz has suffered damage to his reputation and harm to his career. He has also experienced physical pain and suffering, mental anguish, and the loss of enjoyment of life's pleasures.

41. SOREMA acted willfully and in reckless disregard of Mr. Swierkiewicz's rights under Title VII and the ADEA by discharging him from employment on account of his age and national origin.

STATEMENT OF CLAIMS

COUNT I: VIOLATION OF TITLE VII

42. Mr. Swierkiewicz repeats and incorporates by reference the allegations of paragraphs 1- 41 of the Amended Complaint as if they were set forth in full.

43. SOREMA terminated Mr. Swierkiewicz's employment on account of his national origin and thereby violated his right to equal employment opportunity as protected by Title VII.

COUNT II: VIOLATION OF THE ADEA

44. Mr. Swierkiewicz repeats and incorporates by reference the allegations of paragraphs 1- 43 of the Amended Complaint as if they were set forth in full.

45. SOREMA terminated Mr. Swierkiewicz's employment on account of his age and thereby violated his right to equal employment opportunity as protected by the ADEA.

COUNT III: VIOLATION OF THE HUMAN RIGHTS LAW

46. Mr. Swierkiewicz repeats and incorporates by reference the allegations of paragraph 1 -45 of the Amended Complaint as if they were set forth in full.

47. Sorema terminated Mr. Swierkiewicz's employment on account of his national origin and/or age in violation of his right to equal employment opportunity as protected by the Human Rights Law, §298 et. seq.

COUNT IV: VIOLATION OF THE CITY LAW

48. Mr. Swierkiewicz repeats and incorporates by reference the allegations of paragraphs 1 -47 of the Amended Complaint as if they were set forth in full.

49. Sorema terminated Mr. Swierkiewicz's employment on account of his national origin and/or age in violation of his right to equal employment opportunity as protected by the City Law, §8-107 et. seq.

PRAYER FOR RELIEF

WHEREFORE, Mr. Swierkiewicz respectfully requests the Court to enter judgment in his favor and against SOREMA, and to accord him the following relief:

(a) Back pay with prejudgment interest and all the fringe benefits to which he is entitled;

(b) Front pay and benefits to the extent reinstatement is not feasible:

(c) Compensatory damages for his non-economic injuries in an amount authorized by Title VII and by the Human Rights Law and the City Law;

(d) Punitive damages to punish and deter SOREMA from future acts of employment discrimination in an amount authorized by Title VII and the City Law;

(e) Liquidated damages in an amount equal to twice Mr. Swierkiewicz's back pay losses as authorized by the ADEA;

(f) An award of reasonable counsel fees and costs to compensate Mr. Swierkiewicz for having to prosecute this action against SOREMA; and

(g) Such other legal and equitable relief or may be just and proper under the circumstances.

JURY DEMAND

Mr. Swierkiewicz demands a trial by jury on all the issues in this action that are triable by law.

Respectfully submitted,

Harold I. Goodman, Esquire (HG 4895)
RAYNES, MCCARTY, BINDER, ROSS & MUNDY
1845 Walnut Street, 20th Floor
Philadelphia, PA 19103
(215)568-6190

ANNE L. CLARK, ESQUIRE (AC 6456)
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Counsel for Plaintiff,
Akos Swierkiewicz

ROSENMAN & COLIN LLP
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575 Madison Avenue
New York, New York 10022
(212)940-8800
LRB- 4151

99 Civ. 12272 (LAP)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AKOS SWIERKIEWICZ,
Plaintiff

against

SOREMA N.A.,
Defendant.

SUPPLEMENTAL AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LAUREN REITER BRODY, being duly sworn, deposes and says:

1. I am a member of the firm of Rosenman & Colin LLP, attorneys for defendant Sorema. Pursuant to the Court's request, I make this supplemental affidavit to submit to the Court a memorandum dated April 14, 1997 from plaintiff Swierkiewicz to Francois Chavel. A copy of the April 14 memorandum is annexed hereto as Exhibit A.

2. The April 14 memorandum is the document referred to in plaintiff's complaint (see Compl. ¶ 30), and in Sorema's papers in support of its motion,

LAUREN REITER BRODY

Sworn to before me this
23rd day of May. 2000

Notary Public

PENNY KAUFMAN
Notary Public, State New York
No, 01KA6031140
Qualified in Kings County
Commission Expires Sep. 27, 2001

Exhibit A to Supplemental Affidavit of Lauren Reiter Brody

Confidential
To: Francois Chavel
From: Akos Swierkiewicz

4/14/97

Starting April '89 I am proud of my positive contribution to SOREMA, ranging from enhancing the company's image and reputation to achieving a consistently below industry average loss ratios during my tenure as C.U.O.

My "reward" was a gradual demotion, first eliminating my C.U.O. position in 1995, which was awarded a year later to Nicolas Papadopoulo.

I have become increasingly frustrated, burnt out and demoralized by the lack of cooperation, unreasonable demands and constant interference by NP. I have documented numerous evidence reflecting the chaotic situation (files available upon request).

Partial Highlights:

1. After promoting, marketing of program business to reinsurance brokers, followed by numerous visits and thorough analysis, my evaluation was discarded and replaced by new version created by the U.W. Dept., inferior both in style and content, almost embarrassing.

2. Total lack of communication from U.W. Dept. regarding marketing plans and activities resulting in confusing information to brokers and clients.

3. When potential marketing leads are presented and followed up they are ignored, rejected by BG, who in his unexplained and highly negative attitude considers them "harassment" -forgetting the purpose of his employment. (Disregarded cases are documented.)

4. Because of the extensive contacts I built up in the industry, I was successful in arranging numerous marketing visits involving and introducing NP to senior brokers and insurers. After paving the way for these contacts I found myself systematically excluded, cut off from any further participation despite NP's lack of understanding of the US. marketing style.

5. My repeated requests for timely responses to retrocession information and A.M. Best related issues are ignored, thereby creating crisis reactions. Such last minute scrambling not only disrupts scheduling and work priorities but also opens the door for errors. Example. In February, I ended up spending (wasting) 1 full week with Greg Cuilwik on the Catastrophe Driven placement information due to lack of clarity, confusion, constant changes end new demands by NP yet at the same time, shifting the blame and responsibilities on me for his own neglect and delays.

6. Despite my previous objections and protest NP continues to bypass reporting relationships, directing his changing demands to GC regarding retrocession matters. In addition to undermining my authority and to his abusive attitude I have also learned of his negative remarks concerning me -which I strongly object to.

7. Despite my loyalty to the Company, it became increasingly difficult to defend, protect and enhance SOREMA's and Fulcrum's image to the outside world.

The above highlights represent only a partial list and only barely touches the surface pertaining to the continuous tension, the ongoing animosities, and intolerable corporate behavior.

It is evident that I have not only reached the "glass ceiling" at SOREMA with no prospect for future

advancement but also encountering a hostile, demoralizing and humiliating atmosphere and constant chaos, which is counterproductive to work efforts. In view of the above, after long and thoughtful considerations I concluded that I have no other choice but to leave the company, provided that a suitable and acceptable arrangement can be reached:

A. 1 year paid leave of absence (with all benefits, including medical, dental, short and long term disability term life insurance, 401K contribution, company car, pension contribution, etc.);

B. Continue as board member of SOREMA N.A. and Fulcrum;

C. Communication regarding my "departure" to employees and all others should be presented as follows: "At AS' own request it has been agreed that he will take 1 year leave absence from his positions at SOREMA and Fulcrum but will continue to be board member of both companies."

Because of the untenable work environment I wish to leave as soon as above outlined conditions are agreed to.

99 Civ. 12272 (LAP)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AKOS SWERKIEWICZ,
Plaintiff,

v.

SOREMA,
Defendant.

July 6, 2000
9:00 a.m.

Before:

HON. LORETTA A. PRESKA
District Judge

APPEARANCES

VLADECK, WALOMAN & ENGLEHARD
Attorneys for Plaintiff
BY: HAROLD I. GOODMAN
ANNE L. CLARK

ROSENMAN & COLIN
Attorneys for Defendant
BY: LAUREN R BRODY

(In open court)

THE COURT: Won't you be seated, counsel, We're here today on defendant's motion to dismiss the amended complaint.

First, I will state for the record that I do not rely on any of the material in the Brody affidavits beyond the documents referred to in the complaint, that is, the EEOC charge and the memorandum dated April 14, 1997. I disregard the other material as not cognizable on a motion to dismiss.

Counsel agree that the only allegedly adverse employment action at issue is the April, 1997 discharge of plaintiff by defendant. We spent a great deal of time discussing the legal significance of the material in the complaint and the other documents relating to earlier time periods, and, specifically, we've discussed the requirements of United Airlines v. Evans, 97 Supreme Court 1885 at 1889 (1977), to the effect that allegations relating to earlier time periods "may constitute relevant background evidence in a proceeding... but separately considered... [are] merely unfortunate event[s] in history, which [have] no present legal consequences."

I need not decide today to what extent these earlier activities are relevant, as plaintiff suggests, for "context," that is, to show circumstances from which an inference of discrimination can be drawn, because on the record before me they are insufficient in any event.

Plaintiff has, in fact, adequately pled membership in a protected class, qualification for the job in question, and I assume arguendo, without deciding, that he has pled an adverse employment action. What he has not adequately pled are circumstances that support an inference of discrimination.

First, with respect to national origin discrimination, the factual context which counsel points me to is contained primarily in the April 14, 1997 memorandum where plaintiff tells his superior that he is unhappy at the company. He discusses his "gradual demotion" and his becoming

"increasingly frustrated, burnt out, and demoralized by the lack of cooperation, unreasonable demands, and constant interference by [Nicholas Papadopoulu]."

Plaintiff goes on to state that he "found [him]self systematically excluded, cut off from any further participation despite [Mr. Papadopoulo's] lack of understanding of the U.S. marketing style."

Plaintiff also states that: "It is evident that I have not only reached the 'glass ceiling' at Sorema with no prospect for further advancement, but also encountering a hostile, demoralizing, and humiliating atmosphere and constant chaos, which is counterproductive to work efforts. In view of the above, after long and thoughtful considerations, I concluded that I have no other choice but to leave the company provided that a suitable and acceptable arrangement can be reached."

Plaintiff goes on to state what he considers such suitable and acceptable arrangement, including a one-year paid leave of absence and other requirements. He concludes that memorandum by saying, "Because of the untenable work environment I wish to leave as soon as the above outlined conditions are agreed to."

At oral argument, plaintiff's counsel concedes that there was nothing in the memorandum from which an inference of age or national origin discrimination can be made. Counsel argues that the use of the words "glass ceiling" might provide such an inference. I reject that suggestion. There is nothing in the memorandum from which age or national origin discrimination can be inferred, and the use of the popularized term "glass ceiling" is not sufficient.

Indeed, granting all inferences to plaintiff, the memorandum can be characterized as nothing other than

plaintiff's dissatisfaction with his lot within the company for various nondiscriminatory reasons.

As plaintiff stated in his EEOC complaint, which I consider such since it was referred to in the amended complaint, following receipt of the April 14, 1997 memorandum, plaintiff's superiors gave him the option of either resigning or being terminated He opted to be terminated. Plaintiff also states in the EEOC charge that his superiors at the company told him that he had committed a hostile act against the company by clearing out his personal items from the office. He continues, "This all stemmed from my untenable relationship with Nicholas Papadopoulo, (a natural born French citizen of Greek heritage/age 33), executive vice president and chief underwriting officer."

Finally, both in his EEOC charge and in the amended complaint, plaintiff alleges in a conclusory fashion that he was terminated as a result of his age and national origin. Plaintiff alleges in his complaint at, among other places, paragraphs 21, 24, 26 that other, in his view, less qualified individuals were promoted beyond him and alleges at paragraph 38 that individuals fired with cause were provided severance packages, and plaintiff was denied a severance package. All of these are insufficient to raise an inference that the circumstances under which plaintiff was terminated were discriminatory.

With respect to national origin, the only mention of national origin is that plaintiff was of Hungarian descent, that other folks that were promoted were of different national origins, especially Mr. Papadapoulo, who is alleged to be a French citizen, and that there are no other Hungarians at any level within the company. These conclusory allegations are insufficient as a matter of law to raise an inference of discrimination.

With respect to age, plaintiff makes reference to a remark attributed to Mr. Papadopoulo --

MR. BRODY: Your Honor, excuse me, Mr. Chavel.

THE COURT: I'm sorry, Chavel. Thank you.

In February of 1995 or 1996, to the extent that Mr. Chavel wanted to "energize" the underwriting department. This remark was allegedly made at the time Mr. Papadopoulo, a younger man, is alleged to have assumed plaintiff's duties (amended complaint, paragraph 23). This remark is insufficient to create an inference of discrimination.

First, the remark is too vague to be considered age related, even giving all inferences in plaintiff's favor. Secondly, even if the remark were considered to be an age-related remark, it is far too remote in time and unrelated to the job action at issue. As I mentioned, the remark is alleged to have taken place in February of 1995 or February of 1996. Plaintiff's termination was in 1997, April of 1997. Accordingly, the remark was far too remote in time.

Secondly, the remark cannot be said to have been directed at plaintiff or his work activities in the manner discussed by Judge Sotomayor in Cartegna v. Ogden Services, Corp., 995 F. Supp. 459, 463 (S.D.N.Y. 1998). Accordingly, for both those reasons, the energized remark is insufficient to raise an inference of age discrimination.

With respect to the allegations that other folks were promoted who were less qualified, those allegations boil down to exactly that. Plaintiff complains that other folks who, in his view, were less qualified were promoted ahead of him, in his place, assumed his duties and the like. Such allegations are insufficient to raise an inference of discriminatory circumstances.

Finally, with respect to the severance package allegations contained at paragraph 38 of the amended complaint, the sum and substance of those allegations is that other individuals who were fired for cause received severance and plaintiff did not. In both of these circumstances, that is, the promotions and the severance, there are no facts alleged which connect those actions to age or national origin discrimination with respect to plaintiff.

Indeed, during the course of oral argument, no such facts have been discussed in response to questions regarding the severance allegations. Counsel concedes that there were no facts that add to that allegation. Accordingly, even giving all inferences to plaintiff, as I must, on a motion to dismiss, I find that plaintiff has not adequately alleged a prima facie case, in that he has not adequately alleged circumstances that support an inference of discrimination.

Accordingly, the amended complaint is dismissed. The federal claims are insufficient, and I decline to exercise supplemental jurisdiction over the state claims. Because no additional facts have been discussed, which would cure the deficiencies in the federal claim, the dismissal is with prejudice

Counsel, have I forgotten anything?

MS. BRODY: No, your Honor.

THE COURT: Thank you. Good morning, counsel.

MR.GOODMAN: Thank you, your Honor

MS. BRODY: Thank you, your Honor.

99 CIVIL 12272(LAP)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AKOS SWERKIEWICZ,
Plaintiff,

-against-

SOREMA, N.A.,
Defendant

Whereas the parties having appeared before this Court and the matter having come before the Honorable Loretta A. Preska, United States District Judge, and the Court, on July 26, 2000, having rendered its Memo Endorsed Order dismissing the amended complaint with prejudice, it is

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Memo Endorsed Order dated July 26, 2000, the amended complaint is dismissed with prejudice.

DATED: New York, New York
July 31, 2000

JAMES M. PARKISON

Clerk of Court

BY:
Deputy Clerk

Law Offices
Raynes, McCarty, Binder, Ross & Mundy
20th Floor
1845 Walnut Street
Philadephia, PA 19103
(215) 568-6190
Fax (215) 968 0618

August 2, 2000

Via Facsimile Only
Honorable Lorerta A. Preska
United States District Judge
United States Courthouse
500 Pear' Street, Room 1320
New York, NY 10007

Re: Swierkiewicz v. Sorema N.A.

Docket No. 99-CV-12272 (LAP)

Dear Judge Preska:

I write to confirm my understanding that the Court would have dismissed with prejudice Mr. Swierkiewicz's amended complaint had he sought leave to amend paragraph 38 to state that the reason defendant Sorema treated him differently than the referenced employees was on account of his age and national origin. My understanding is drawn from the Court's bench ruling at the argument held on July 6, 2000.

If my understanding is correct, I do not wish to burden the Court with a futile motion for reconsideration pursuant to Rule 59, and wish only to ensure that the record is clear for appeal.

If I am mistaken in my assumption, I respectfully request that the Court consider this letter as a motion pursuant to Rule 59 and grant plaintiff additional time to file a memorandum of law in support of the motion.

Thank you very much,

Respectfully submitted,

Harold I. Goodman

HIG/vlf
cc: Lauren Reiter Brody, Esquire (via facsimile *and first class mail)* Anne L. Clark, Esquire *(via facsimile and first cl ass mail)*

Because counsel was unable to state any additional facts to be included in an amended complaint, any amendment would be futile.

SO ORDERED

Loretta A. Preska, USDJ

August 11, 2000

No. 00-9010

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AKOS SWIERKIEWICZ,
Plaintiff-Appellant,

v.

SOREMA, N.A.,
Defendant-Appellee.

March 12, 2001, Decided

COUNSEL:
APPEARING FOR APPELLANT [sic]: LAUREN REITER BRODY, Esq., Rosenman & Colin, LLP, New York, NY.

APPEARING FOR APPELLEE [sic]: HAROLD I. GOODMAN, Esq., Raynes, McCarty, Binder, Ross & Mundy, Philadelphia, PA.

JUDGES:
PRESENT: Hon. John M. Walker, Jr., Chief Judge, Hon. James L. Oakes, Hon. Guido Calabresi, Circuit Judges.

SUMMARY ORDER

Appeal from the United States District Court for Southern District of New York (Preska, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of said district court be and it hereby is **AFFIRMED**.

Plaintiff-appellant Akos Swierkiewicz appeals from an August 1, 2000 judgment of the United States District Court for the Southern District of New York (Preska, J.) granting Sorema's motion to dismiss appellant's claims of discrimination based on national origin, pursuant to Title VII of the Civil Rights Act of 1964, *42 U.S.C. § 2000*(e); and age discrimination, pursuant to the Age Discrimination in Employment Act of 1967, *29 U.S.C. § 626*(c)(1). On appeal, Swierkiewicz argues that the district erred in dismissing the complaint because the district court improperly applied a heightened pleading requirement and, in the alternative, if he needed to comply with a heightened pleading requirement, he has done so and that dismissal was therefore unwarranted.

Swierkiewicz, of Hungarian descent, has been a United States citizen since 1970. Defendant-appellee Sorema is a reinsurance company headquartered in New York and principally owned and controlled by a French parent company. In April 1989, Swierkiewicz, at the age of 43, began working for Sorema as a Senior Vice President and Chief Underwriting Officer. In February 1995, Francois Chavel, Sorema's President and Chief Executive Officer, shifted Swierkiewicz's job responsibilities to marketing and services and transferred the bulk of Swierkiewicz's underwriting responsibilities to Nicolas Papadopoulo, a 32-year-old French national. At the time of this transition, Chavel stated that he wanted to "energize" the underwriting department. Swierkiewicz states that over the next two years he was "isolated by Mr. Chaval excluded from business decisions and meetings and denied the opportunity to reach his true potential at Sorema."

In April 1997, Swierkiewicz wrote a memorandum to Mr. Chaval outlining these grievances and concluding that he had no choice but to leave the company providing that a suitable severance package was provided. Two weeks later, Sorema's general counsel informed Swierkiewicz that Swierkiewicz could either resign without a severance package or be terminated. Later that same day, upon Swierkiewicz's refusal to resign, Sorema fired him.

We review the district court's grant of motion to dismiss de novo. *See Tarshis v. Riese Org., 211 F.3d 30, 35 (2d Cir. 2000).*

"It is well settled in this Circuit that a complaint consisting of nothing more than naked assertions, and setting forth no facts upon which a court could find a violation of the Civil Rights Acts, fails to state a claim under Rule 12(b)(6)." *Martin v. New York State Dep't of Mental Hygiene, 588 F.2d 371, 372 (2d Cir. 1978); see also, Tarshis, 211 F.3d at 35.*

To plead discrimination based on national origin, a plaintiff must allege (1) membership, (2) qualification for the job in question, (3) an adverse employment action and (4) circumstances that give support to an inference of discrimination. *See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).* With respect to national origin, the only circumstances Swierkiewicz pled are that he is Hungarian, others at Sorema are French, and the conclusory allegation that his termination was motivated by national origin discrimination. We agree with the district court that these allegations are insufficient as a matter of law to raise an inference of discrimination.

To plead discrimination based on age, a plaintiff must allege that (1) he is in the protected age group, (2) he is qualified for the job, (3) he was discharged and (4) the discharge occurred under the circumstances giving rise to an inference of age discrimination. *See Hollander v. American Cyanamid Co., 172 F.3d 192, 198* (2d Cir.), *cert. denied, 528*

U.S. 965 (1999). The only circumstance that Swierkiewicz alleges gives rise to an inference of age discrimination is Chavel's comment in 1995 that Chavel wanted to "energize" the underwriting department. We agree with the district court that this allegation is insufficient as a matter of law to raise an inference of discrimination.

We have considered Swierkiewicz's remaining arguments and consider them to be without merit. For the foregoing reasons, we AFFIRM the judgment of the district court.

FOR THE COURT:

ROSEANN B. MACKECHNIE, CLERK

By:

/s/ Lucille Carr, Deputy Clerk